

§ 102.32 Benefits for lost employment income.

(a) Requesters who are smallpox vaccine recipients or vaccinia contacts may be able to receive benefits for loss of employment income incurred as a result of a covered injury (or its health complications, as described in § 102.31(b)). These benefits are a percentage of the employment income lost due to the covered injury or its health complications.

(b) The method and amount of benefits for lost employment income are described in § 102.81. Benefits for lost employment income will be adjusted if there are fewer than 10 days of lost employment income. Benefits provided for lost employment income may also be adjusted for annual and lifetime caps. Payment of benefits for lost employment income is secondary to any obligation of any third-party payor to pay for lost employment income or to provide disability or retirement benefits to the requester. As provided in § 102.84, the Secretary retains the right to recover benefits for lost employment income paid to requesters from third-party payors.

(c) The Secretary is not requiring an individual to use paid leave (e.g., sick leave or vacation leave) to be paid for lost work days. However, if an individual uses such paid leave in order to be paid for lost work days, the Secretary will not consider the days in which such leave was used to be days of lost employment income, unless the individual's employer restores the leave that was used. By restoring paid leave, an employer puts the individual in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, takes back the payments made when the leave was taken and gives back the leave to the employee for future use).

(d) The Secretary may pay benefits for lost employment income to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid to the deceased person during his or her lifetime.

§ 102.33 Death benefits.

(a) Eligible survivors may be able to receive a death benefit under this Program if the Secretary determines that an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact sustained a covered injury and died as a direct result of the injury. Annual and lifetime caps may apply to the death benefits provided. The method and amount of death benefits are described in § 102.82. As provided in § 102.84, the Secretary retains the right to recover death benefits paid to requesters from third-party payors. Death benefits may be paid under two different calculations.

(b) The standard calculation, described in § 102.82(c), is based upon the death benefit available under the PSOB Program and is available to all eligible survivors (except for surviving dependents younger than the age of 18 who are not also surviving eligible children). In the event that death benefits were paid under the PSOB Program with respect to the deceased person, no death benefits may be paid under the standard calculation. In addition, death benefits under this standard calculation are secondary to disability benefits under the PSOB Program. Any death benefit paid under the standard calculation will be reduced by the total amount of benefits for lost employment income paid to the smallpox vaccine recipient or vaccinia contact during his or her lifetime and to his or her estate after death.

(c) The alternative calculation, described in § 102.82(c), is calculated based on the person's employment income at the time of the covered injury. This calculation is only available to surviving dependents who are younger than the age of 18. The legal guardian(s) of such surviving dependents must select the death benefit as calculated under this alternative calculation before it will be paid. The payment of a death benefit as calculated under this alternative calculation is secondary to other benefits received (compensation for loss of employment income, death benefits (including PSOB Program death benefits), disability benefits, or retirement benefits on behalf of the dependent(s) or his or